

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FIREMAN'S FUND
INSURANCE COMPANY,
a/s/o Thirty Four Lime Street Trust, et al.
Plaintiff,

v.

CIVIL ACTION No. 05-30089-KPN

C.H. NEWTON CONTRACTORS,
and
ALAIRE PLUMBING & HEATING,
Defendants.

C.H. NEWTON CONTRACTORS' ANSWER AND JURY CLAIM

Now comes the Defendant, C. H. Newton Contractors, whose proper name is C. H. Newton Builders, Inc., and answers the Plaintiff's Complaint as follows:

1. The Defendant is without information sufficient to admit or deny the allegations contained in this Paragraph.
2. The Defendant admits that C.H. Newton Builders, Inc. is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts with its principal place of business located at 549 West Falmouth Highway, Falmouth, Massachusetts 02540.
3. The Defendant admits the allegations contained in this Paragraph.
4. The Defendant admits the allegations contained in this Paragraph.
5. The Defendant admits that venue in this action is in the District of Massachusetts but denies that the case is properly assigned to the Western Division. The proper assignment is the Eastern Division pursuant to the provisions of LR D. Mass 40.1 (C) (1) and (D) (1) (c).
6. The Defendant is without information sufficient to admit or deny the allegations contained in this Paragraph.

7. The Defendant admits that at some point prior to January 26, 2004 it performed contractor services at the premises. The Defendant states further that substantial work was performed for the homeowners prior to its involvement in the project and that Alaire performed its work for the homeowners on a "time and materials" basis.

8. The Defendant denies the allegations contained in this Paragraph, answering further that Alaire performed its work for the homeowners on a "time and materials" basis.

9. The Defendant admits the allegations contained in this Paragraph.

10. The Defendant is without information sufficient to admit or deny the allegations contained in this Paragraph.

COUNT I

11. The Defendant repeats and reavers its responses to Paragraphs 1 through 10 as if specifically set forth herein.

12. The Defendant denies the allegations contained in this Paragraph.

Wherefore, the Defendant states that the Complaint should be dismissed and the Plaintiff take nothing and the Defendant be awarded its costs and attorneys' fees.

COUNT II

13. The Defendant repeats and reavers its responses to Paragraphs 1 through 10 as if specifically set forth herein.

14. The Defendant denies the allegations contained in this Paragraph.

15. The Defendant denies the allegations contained in this Paragraph.

16. The Defendant denies the allegations contained in this Paragraph.

Wherefore, the Defendant states that the Complaint should be dismissed and the Plaintiff take nothing and the Defendant be awarded its costs and attorneys' fees.

COUNT III AND IV (MIS-TITLED COUNT III)

These counts are not directed to this Defendant and therefore no further response is required. To the extent these Counts include allegations of breach of contract or negligence for which the Defendant may be liable, they are denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

And answering further, the Defendant states that the Complaint should be dismissed on the grounds of misnomer.

Second Affirmative Defense

And answering further, the Defendant states that the damages alleged by the Plaintiff were caused by persons for whose conduct the Defendant is not responsible.

Third Affirmative Defense

And answering further, the Defendant states that if the Plaintiff's subrogor was negligent, such negligence reduces or bars recovery in this action under Massachusetts law.

JURY CLAIM

The Defendant demands a trial by jury as to all allegations set forth in the Complaint, this Answer and any further responsive pleadings.

I hereby certify that I am a member
of the Superior Court in accordance
with the provisions of P.S. Ch. 23.
8/17 5-29-05

The Defendant,
C. H. Newton Contractors,
Whose Correct Name is
C. H. Newton Builders, Inc.,
By its Attorneys,


Scott J. Tucker - BBO#503940
Tucker, Heifetz & Saltzman, LLP
Three School Street
Boston, Massachusetts 02108
(617) 557-9696